



In the United States Patent and Trademark Office

Appellant:	Gerald K. Sosalla	Docket No.:	16,214A
Serial No.:	09/871,019	Group:	3721
Filed:	5/31/01	Examiner:	Lopez, Michelle
For:	STACK OF FANFOLDED MATERIAL AND COMBINATIONS THEREOF	Date:	October 15, 2004

Appeal Brief Transmittal Letter

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37, transmitted herewith is an Appeal Brief pursuant to the Notice of Appeal which was mailed on August 16, 2004.

Please charge the \$340.00 fee, pursuant to 37 C.F.R. 41.20(b)(2), which is due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. This Appeal Brief Transmittal Letter is submitted in duplicate.

Respectfully submitted,
GERALD K. SOSALLA

By: Scott A. Baum
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Registration No.: 51,237

CERTIFICATE OF MAILING

I, Lanette Burton, hereby certify that on October 15, 2004, this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: Lanette Burton
Lanette Burton



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In the United States Patent and Trademark Office

Appellant:	Gerald K. Sosalla	Docket No.:	16,214A
Serial No.:	09/871,019	Group:	3721
Confirmation No:	8208	Examiner:	Lopez, Michelle
Filed:	May 31, 2001	Date:	October 15, 2004
For:	STACK OF FANFOLDED MATERIAL AND COMBINATIONS THEREOF		

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 41.37, Appellant respectfully submits this Brief On Appeal. On August 16, 2004, Appellant filed a timely Notice of Appeal. The two-month time period for filing this brief ends on October 16, 2004, which is a Saturday.

Real Party in Interest

The real party in interest with respect to the pending appeal is Kimberly-Clark Worldwide, Inc. who is the assignee of the present application.

Related Appeals and Interferences

Appellant is not aware of any other appeals or interferences which may be related to, directly affect or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

Status of Claims

Claims 1, 2, 18, 19, and 22 remain in the application and with all claims rejected in the Advisory Action dated October 7, 2004. The currently pending claims are listed in the Claims Appendix.

Status of Amendments

An Amendment After Final Rejection was filed on August 12, 2003. The amendment canceled claims 6 and 23, incorporating the claimed subject matter into independent claims 1 and 18. The Advisory Action dated October 7, 2004, indicated the amendment was entered.

Summary of the Claimed Subject Matter

Referring to Figures 3, 3A, 3B, 3C, 4 and 4A and the specification at page 9, line 25 through page 10, line 15; independent claim 1 is drawn to a stack (10) of fan folded material. Such material is commonly called wet wipes and used for personal cleansing. The stack comprises at least two clips (20) of fan folded material; each clip comprising a plurality of fan folded sheets (22) formed from a same web of material which travels in a length direction of the web of material, each sheet of the clip joined to at least one adjacent sheet by a weakened line (24), wherein the weakened line is formed in the length direction of the web of material (Figure 1) and the weakened line is located at an end of each sheet when such sheet joins the end of the adjacent sheet by the weakened line and the plurality of fan folded sheets comprise fold lines formed in the length direction of the web of material (Figure 1); each clip joined to an adjacent clip by a last sheet of one clip being adhesively joined (92) to a first sheet of a succeeding clip; and the stack further comprising a liquid in combination with the stack of fan folded material, the liquid at an add-on rate of about 25 to about 600 weight percent based on a dry weight of the stack of fan folded material.

Referring to Figures 3, 3A, 3B, 3C, 4, and 4A and the specification at page 9, line 25 through page 10, line 15; independent claim 18 is drawn to a stack (10) of fan folded material. Such material is commonly called wet wipes and used for personal cleansing. The stack comprises at least two clips (20) of fan folded material; each clip comprising a plurality of fan folded sheets (22) formed from a same web of material which travels in a length direction of the web of material, each sheet of the clip joined to at least one adjacent sheet by a weakened line (24) wherein the weakened line is formed in the length direction of the web of material (Figure 1) and the weakened line is located at an end of each sheet when such sheet joins the end of the adjacent sheet by the weakened line and the plurality of fan folded sheets comprise fold lines formed in the length direction of the web of material (Figure 1); each clip joined to an adjacent clip by a sheet of one clip being separably joined (page 5, lines 10 - 20) to a different sheet of a succeeding clip; and the stack further comprising a liquid in combination with the stack of fan folded material, the liquid at an add-on rate of about 25 to about 600 weight percent based on a dry weight of the stack of fan folded material.

Grounds of Rejection to be Reviewed on Appeal

1. Whether claims 1, 2, 18, 19 and 22 stand properly rejected under 35 U.S.C. § 103(a) as obvious over U.S. 6,286,712 issued to *Craig* in view of U.S. 4,768,810 issued to *Mertens* and further in view of U.S. 3,518,810 issued to *Steeves*.

Argument

Claims 1, 2, 18, 19, and 22 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. 6,286,712 issued to *Craig* in view of U.S. 4,768,810 issued to *Mertens* and further in view of U.S. 3,518,810 issued to *Steeves*. *Craig* discloses a stack of interfolded sheets with adjacent clips adhesively secured or mechanically bonded together. *Mertens* discloses a writing tablet formed from a folded paper web having pressure sensitive adhesive areas that also has transverse perforated lines to tear the individual sheets from the tablet. *Mertens* discloses an embodiment of the familiar Post-it Notes® sold by 3M Corporation. *Steeves* discloses a web pleating apparatus for web materials that are stiff in nature such as polyester or other plastic films or film laminates, which cannot take a so-called dead-fold as opposed to paper webs which do readily take a dead-fold. See column 1, lines 22 - 25 of *Steeves*.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicants' disclosure. See MPEP § 2143 citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Furthermore, "A statement that modifications of the prior art to meet the claimed invention would have 'been well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." See MPEP § 2143.01 citing *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. See *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

1. No Motivation to Combine the References as Suggested

The Applicants respectfully traverse the Examiner's position that a *prima facie* case of obviousness has been established. In particular, the Applicants assert that the Examiner has used the Applicants' specification to enable hindsight reconstruction of the claimed invention by selecting non-analogous art from the Post-it Notes® area to be combined with *Craig*, and from the folding of plastic films area to be further combined with *Craig* to derive the Applicants' claims. The Applicants' claimed invention is directed to a moistened stack of fan folded sheets suitable for use as a wet wipe. *Craig* is the only reference that concerns wet wipes.

The Office Action dated May 12th, 2004, states that the reason for combining *Craig* with *Mertens* is for the purpose of tearing individual sheets of a uniform size. However, the sheets of *Craig* are **already** of a uniform size by virtue of being interfolded as shown and taught. An interfolded sheet is pre-cut to a uniform size and then folded with other sheets of a uniform size in such a manner to enable "pop-up" dispensing. Pop-up dispensing refers to the process where withdrawing one sheet from a dispenser partially withdraws the next sheet into the dispensing opening. A common application is a facial tissue carton.

Why is one of ordinary skill in the art motivated to combine the references as suggested by the Examiner to provide sheets of a uniform size when the sheets of *Craig* are already of a uniform size? One of ordinary skill in the wet wipes art would not be motivated to replace the interfolding process taught by *Craig* with a perforation process to arrive at the same uniformly sized sheets already provided by *Craig*. Thus, there is no motivation for combining *Craig* with *Mertens* as suggested by the Examiner.

Instead, the perforation process improves the dispensing function, for example, by reducing "wipe fallback" or "multiple wipes" as taught on page 2, line 18 - page 3, line 6 of the Applicants' specification. *Craig* does not disclose or suggest that the disclosed interfolded stack has any dispensing issues which require another process to join the wipes by weakened lines for the purpose of overcoming those issues. The mechanism for pop-up dispensing in *Craig* relies on sheet adhesion. As such, reliable pop-up dispensing can be influenced by basesheet texture, moisture level of the wipe, solution tackiness, and variations in the folding process due to sheet weaving. Production variability in these factors can cause the previously discussed dispensing problems. The pop-up dispensing in the current invention is controlled primarily by one factor - perforation strength. This provides for a significant reduction in the number of variables that needs to be precisely controlled to provide for reliable pop-up dispensing.

Similarly, *Mertens* does not teach or suggest the use of perforations to improve dispensing by reducing wipe fallback or multiple dispensing since the writing tablet of *Mertens* is not intended to be used in a dispenser, unlike a stack of wet wipes which must be placed in a dispenser to prevent drying out prior to use. Only the Applicants' specification suggests the desirability of this solution.

The Office Action dated May 12th, 2004, states that the reason for combining *Steeves* with *Craig* is to provide for a compactly packaged article. However, the sheets of *Craig* are **already** in a compactly packaged condition by virtue of being interfolded as shown and taught. Thus, why is one of ordinary skill in the art motivated to combine the references as suggested by the Examiner to arrive at a compact packaged article when the stack of *Craig* is already a compact packaged article? There is no reason for one of skill in the wet wipes art to replace the interfolding process of *Craig* with the longitudinal fold of *Steeves* to arrive at a folded stack of the same size already provided by *Craig*. Furthermore, the *Steeves*' reference teaches that such a method is not needed for paper webs since they can be readily folded by different means, e.g. by dead-fold means. *Steeves* teaches away from using the process for paper webs or other flexible webs suitable for use as a wet wipe. Thus, one of ordinary skill in the wet wipes art would not be motivated to combine *Craig*, which concerns wet wipes (column 1, lines 10 - 21), with the *Steeves*' process for folding stiff materials, such as plastic films, since it is not even suggested for use with paper webs.

The Examiners' suggested rational for combining the non-analogous references of *Mertens* and *Steeves* do not establish a reason why one of ordinary skill in the wet wipes art would be motivated to combine the references. The suggested reasons merely accomplish the same benefits already provided by *Craig*'s interfolded stack. The combination of references does not teach or suggest the improved dispensing provided by the Applicants' claimed invention. Rather, it appears instead that the Applicants' disclosure has been used as a blueprint to select individual claim components to arrive at the Applicants' claimed invention.

In the Advisory Action dated October 7, 2004, the Examiner "contends that the limitation of the intended use of perforations to improve dispensing is not disclosed [disclosed] in the claim body." Contrary to the Examiner's position that the improved dispensing is not claimed and therefore no patentable weight should be given with regard to the prior art, there is no requirement to claim the advantages of following from an invention. As noted in *Ex Parte Eric R. Rinderer*, Appeal No. 2000-1651 of patent application 08/871,923, the Board stated: "In order to distinguish the claims over the prior art, an applicant is not required to recite the advantages flowing from the claimed invention; rather, the claims must include the structure which provides those advantages." The recited structure, namely

the perforations joining adjacent sheets, is claimed and this structure provides the dispensing advantages.

2. Combination Fails to Teach or Suggest All Claim Limitations

The Appellants traverse the combination of references as proper, but even if combined as suggested, the proposed combination fails to teach or suggest all the claim limitations. Claims 1 and 18 recite a plurality of fan folded sheets “wherein the weakened line is formed in the length direction of the web material and the weaken line is located at an end of each sheet.” Referring to Figure 2 of *Mertens*, the plurality of sheets in *Mertens* is joined together by a plurality of **transverse** or cross-direction perforated lines 22 - not **longitudinal** lines as claimed. *Mertens* recites at column 4, lines 52 - 55:

In FIG. 2, a substantially continuous paper web 20 has transverse perforations 22 along which the web can be torn evenly into individual sheets 28, each of which bears the same pressure-sensitive adhesive pattern. On one side of a central longitudinal perforation 25 is a checkerboard pattern 26A of aggressive pressure-sensitive adhesive, and on the other side is a checkerboard pattern 26B of low-tack pressure-sensitive adhesive. Upon fanfolding the web 20 along the perforations 22, the adhesive patterns 26A and 26B of each of the sheets 28 contact the adhesive-bearing face of the adjacent sheet only in slightly larger nonadhesive areas 27A and 27B.

Mertens does show a central longitudinal perforation line 25, but that line does not connect the plurality of individual sheets to each other at the ends as claimed. Rather it allows only a single sheet to be torn into two pieces. *Mertens* states at column 4, line 64 through column 5, line 2:

After removing the top sheet from the fanfolded tablet, that sheet can be torn evenly into two pieces along central perforation 25, either before or after the sheet has been put to use. The web 20 includes a pair of detachable pin-drive edges 29A and 29B which can be cleanly torn away along longitudinal perforations 25A and 25B, respectively.

Thus, while *Mertens* does show both longitudinal and transverse perforations, the longitudinal perforations are not orientated, as claimed by the Applicants, to join individual sheets together at the **end** of each sheet. The central longitudinal perforation line 25 of *Mertens* is in the center of the sheet, and the pin-drive longitudinal perforations (25A and 25B) are located some distance inboard from the side of each sheet and not located at the end as claimed.

3. Non-Analogous Art Improperly Combined with *Craig*

To rely on a reference under 35 U.S.C. § 103 it must be analogous art. See MPEP § 2141.01(a). “In order to rely on a reference as a basis for rejection of an applicant’s invention, the reference must be either in the field of applicant’s endeavor or, if not, then be reasonable pertinent to the particular problem with which the invention was concerned.” *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992).

“Where the general scope of a reference is outside the pertinent field of the endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved.” See MPEP § 2141.01(a).

The Appellant’s field of endeavor is wet wipes and the problem to be solved is improved dispensing. Only *Craig* is within the field of endeavor since it teaches that the clips can be wet or pre-moistened sheets. Neither *Mertens* nor *Steeves* is concerned with wet wipes nor do they suggest that the disclosed webs can be moistened. *Mertens* field of endeavor is writing tablets as stated in the Field of the Invention at column 1, lines 7 - 12. *Steeves* field of endeavor is folding stiff web materials such as polyester or plastic films as stated at column 1, lines 23 - 28. Furthermore, neither *Mertens* nor *Steeves* is relevant to the problem which the Appellants are solving. The Appellant’s problem is improved dispensing of wet wipes. Neither *Steeves* nor *Mertens* discuss dispensing of wet wipes or suggest ways to improve the same. As such, neither *Steeves* nor *Mertens* is analogous art.

Conclusion

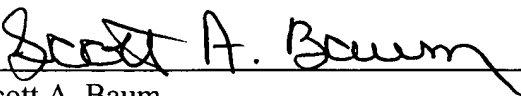
For the reasons stated above it is Appellant’s position that the Examiner’s rejection of claims has been shown to be untenable and should be **reversed** by the Board. Please charge the \$330.00 fee, pursuant to 37 C.F.R. 1.17(c), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: (920) 721-7760

Respectfully submitted,

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CERTIFICATE OF MAILING

I, Lanette Burton, hereby certify that on October 15, 2004, this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By *Lanette Burton*
Lanette Burton

Claims Appendix

The claims on appeal are:

1. (Previously Amended) A stack of fan folded material comprising:
at least two clips of fan folded material;
each clip comprising a plurality of fan folded sheets formed from a same web of material which travels in a length direction of the web of material, each sheet of the clip joined to at least one adjacent sheet by a weakened line wherein the weakened line is formed in the length direction of the web of material and the weakened line is located at an end of each sheet when such sheet joins the end of the adjacent sheet by the weakened line and the plurality of fan folded sheets comprise fold lines formed in the length direction of the web of material;
each clip joined to an adjacent clip by a last sheet of one clip being adhesively joined to a first sheet of a succeeding clip; and
the stack further comprising a liquid in combination with the stack of fan folded material, the liquid at an add-on rate of about 25 to about 600 weight percent based on a dry weight of the stack of fan folded material.
2. (Original) The stack of claim 1 wherein the weakened line comprises perforations.
- 3 - 17. (Canceled)
18. (Previously Amended) A stack of fan folded material comprising:
at least two clips of fan folded material;
each clip comprising a plurality of fan folded sheets formed from a same web of material which travels in a length direction of the web of material, each sheet of the clip joined to at least one adjacent sheet by a weakened line wherein the weakened line is formed in the length direction of the web of material and the weakened line is located at an end of each sheet when such sheet joins the end of the adjacent sheet by the weakened line and the plurality of fan folded sheets comprise fold lines formed in the length direction of the web of material;
each clip joined to an adjacent clip by a sheet of one clip being separably joined to a different sheet of a succeeding clip; and

the stack further comprising a liquid in combination with the stack of fan folded material, the liquid at an add-on rate of about 25 to about 600 weight percent based on a dry weight of the stack of fan folded material.

19. (Original) The stack of claim 18 wherein the weakened line comprises perforations.
- 20 - 21. (Canceled)
22. (Original) The stack of claim 18 wherein separably joined comprises adhesively joined.
23. (Canceled)